Remarks/Arguments

Page 1, paragraph 4, of the Office Action stated that Claims 1 to 29, 31, 33 to 35 and 37 to 42 are pending. and that paragraph 6 stated that Claims 1 to 29, 31, 33 to 35 and 37 to 42 are pending. Applicants disagree because Claims 1 to 12 were canceled at the time of filing the application.

The Office Action stated: that applicants' amendment necessitated the new ground(s) of rejection presented in the Office Action; that, accordingly, the Action is made final; and see MPEP 706.07(a). Applicants traverse this statement and request that the finality of this Office Action be withdrawn. Applicants' amendments in response to the first Office Action did not necessitate the new grounds of rejection. In the first Office Action, the Examiner used WO 9829312 (Olivieri et al.) as a secondary reference in a Section 103(a). The Examiner currently contends that Olivieri et al. anticipates [Section 102(b)] most of claims as amended in response to the first Office Action. As such claims are narrower than the claims rejected by the first Office Action (except for previously-canceled independent Claim 30, the subject matter of which was inserted into independent Claims 12 and 42), the Examiner should have rejected some of the claims dealt with in the first Office Action as being anticipated by Olivieri et al. Rule 104(a) states: "The examination shall be complete with respect...to the patentability of the invention as claimed, ..." Rule 104(b), entitled "Completeness of examiner's action", states: "The examiner's action will be complete as to all matters,...." MPEP 707.07(g), entitles "Piecemeal Examination," states:

"Piecemeal examination should be avoided as much as possible. The Examiner ordinarily should reject each claim on all valid grounds available,...."

Note that Olivieri et al. was already of record and in use in a Section 103(a) rejection in the first Office Action. To repeat, applicants' request that the finality of the Office Action be withdrawn and that a further Office Action (if the claims are not allowed) be issued.

Claims 12 to 29, 31, 33 to 35 and 37 to 42 remain in the application. All but Claims 17, 19, 22, 26 and 27 have been amended. Independent Claim 12 is not anticipated but has been amended to make its language more clear.

Claims 12, 13, 15, 18, 19, 23 to 29, 31, 33 to 35, 37, 39, 41 and 42 have been rejected under 35 U.S.C. 102(b) as being anticipated by Olivieri et al. (WO 98/29312). Applicants traverse this rejection.

Applicants' process claims require a sequence of perforating film 14 and joining the pre-cut film 14 to the other layers 12 to make up the composite (multi-layer) film 10. Olivieri et al. does not teach or suggest such sequence of steps. Instead, Olivieri et al. prepares a composite film having a central metal layer, and only then perforates the layer(s) on one side of the central metal layer. Therefore, Olivieri et al. does not anticipate any of applicants' process claims for preparing applicants' multi-layered composite.

The Office Action stated that Olivieri et al. discloses a process comprising manufacturing a multilayer packaging film for a packaging (page 1, lines 1 and 2) having at least one line of perforations (Figure 8a, number 433) that are provided

in a plastic surface layer of the packaging (page 1, line 5: Figure 8, number 433) and serve as an aid for alignment of a tear line propagating in the packaging film upon tearing open the packaging (page 15, line 11 to 13), including cutting the perforations into a surface layer which is in the form of a film (page 13, lines 34 to 39), and joining the precut film to the other layers to make up a composite film (page 14, lines 18 and 19). Applicants traverse this statement as being factually incorrect. Olivieri et al. does not disclose that which the Examiner asserts that Olivieri et al. discloses.

Page 13, lines 34 to 39, of Olivieri et al. speaks of "precut lines 432, 433," however this refers to cutting lines of perforations in one side of the composite film (down to the central metal foil) after the composite film has been formed. Page 13, lines 34 to 39, states:

> "In particular, the laser beam is applied to the said lower layer of the said film in order, then, to produce two successions of parallel micro-perforations forming the said parallel precut lines slightly spaced from one another. the spacing between the two parallel precut lines is approximately between 2 and 5 nm." [Emphasis supplied]

Olivieri et al. cuts the perforations with a laser in a layer after the multi-layer (composite) film has been formed.

Page 14, lines 18 and 19, of Olivieri et al. does not disclose joining a precut film to the other layers to make up a composite (multi-layer) film. Olivieri et al.'s laser cuts lines of perforations in a layer(s) of an already formed composite (multi-

layer) film. Page 14, lines 18 to 19, refers to the welding of the edges (410, 430) of folded over composite to form a pack (pouch). Page 14, lines 6 to 23, states:

> "According to one embodiment, the precut line extends over the entire width of the film, that is to say the entire width of the pack, as shown more especially in Figure 8a and in detail in Figure 9a."
>
> "Thus, as these figures show, the precut lines extend on the welded edges 430, 410 of the said pack 400.
>
> "According to a variant shown more especially in Figure 9b, there may be provision, when the method according to the invention is being implemented, for producing each precut line over only part of the width of the film, that is to say part of the width of the pack, leaving free of micro-perforations the two longitudinal edges 430 of the film which are intended to be welded in order to make the said pack."
>
> "Thus, as shown in Figure 9a, each precut line extends over part of the width of the said pack 400, being interrupted in the region of the lateral welds 430 of the latter." [Emphasis supplied]

Olivieri does not join a precut film or layer to other films or layers to form a composite (multi-layer) film. Numerals 12, 12a and 12b are termed "layers" by Olivieri et al., not "films."

The phrase "precut lines" refers to the lines of perforations cut into the lower layer of the already formed composite film.

Olivieri et al. does not anticipate applicants' claimed process.

Olivieri et al. states:

"The invention relates to a method for the manufacture of a pack, particularly intended for undergoing preservation treatment, from at least one film (10) comprising two plastic layers, an upper (11) and a lower (12), which form the outer and inner faces of said pack, and a light-metal central layer (13) sandwiched between said upper and lower layers. According to the invention prior to the operations to make said pack, a laser beam is applied solely to the lower layer of said film, said lower layer forming the inner face of said pack, in order to produce, virtually in the entire thickness of said lower layer, at least one perforation (14) forming at least one pre-cut line." [Emphasis Supplied] [Abstract, lines 1 to 5]

"It is characterized in that, prior to the operations to make the said pack, a laser beam is applied soley to the lower layer of the said film, the said lower layer forming the inner face of the said pack, in order to produce, virtually in the entire thickness of the said lower layer, at least one perforation forming at least one precut line." [Emphasis supplied] [Page 4, lines 14 to 20]

"Thus, according to the invention, the lower film layer forming the inner face of the pack is embrittled along a defined line by the application of laser beam. The laser beam is absorbed by the plastics forming the lower layer of the film and is reflected totally by the light-metal central layer. In the region of the impact of the incident beam, the materials are heated, melt and evaporate. This results in a perforation of the lower layer as far as the light-metal layer along the laser beam application line." [Emphasis Supplied] [Page 4, lines 26 to 35]

"..., each perforation is a succession of micro-perforations forming a precut line." [Emphasis Supplied] [Page 5, lines 4 to 6]

"According to a variant of the method according to the invention, two parallel perforations forming two parallel precut lines slightly spaced from one another are produced simultaneously in the entire thickness of the said lower layer of the film." [Emphasis Supplied] [Page 6, lines 22 to 26]

"Of course, in an embodiment of the method according to the invention, by which the film is wound on reels and fed continuously, the laser beam is then applied, at specific locations on the said film, solely to the lower layer of the latter, in order to produce at each specific location, virtually in the entire thickness of the said lower layer, at least one perforation forming at least one precut line." [Emphasis Supplied] [Page , lines 9 to 16]

"According to the invention, in the method for the manufacture of a pack of the types shown, for example, in Figures 1a, 1b, 2a, 2b, 3a, 3b, 4a, 4b, 4c and 5a, 5b, 5c, from one or more films of the type shown in Figure 6, prior to the actual operations to make the said pack, a laser beam is applied solely to the lower layer of the said film, the said lower layer forming the inner face of the said pack, in order to produce, in the entire thickness of the said lower layer, at least one perforation forming at least one precut line." [Emphasis Supplied] [Page 12, lines 14 to 23]

"In the region of the impact of the incident laser beam, the plastics are heated, melt and evaporate. This results in a perforation of the plastic

layer as far as the aluminum layer along the laser beam application line." [Emphasis Supplied] [Page 12, lines 33 to 37]

"In this case, the laser beam 1, 2 is applied, at specific locations on the film, solely to the lower layer of the latter, in order to produce at each specific location on the said film 10, in the entire thickness of the said lower layer, at least one succession of microperforations or a single continuous perforation, forming at least one precut line." [Emphasis Supplied] [Page 16, lines 1 to 8]

"In particular, there may be provision, according to the invention, for manufacturing each pack from a film taking the form of one or more individual sheets, to the lower layer of which laser beam is applied, prior to the actual operations to make the pack, in order to produce at least one perforation forming at least one precut line." [Emphasis Supplied] [Page 17, lines 6 to 12]

"Method for the manufacturing of a pack, particularly intended for undergoing preservation treatment; from at least one film (10) comprising two plastic layers, an upper (11) and a lower (12), which form the outer and inner faces of the said pack, and a light-metal central layer (13) sandwiched between the said upper (11) and lower (12) layers, characterized in that, prior to the operations to make the said pack, a laser beam is applied soley to the lower layer (12) of the said film (10), the said lower layer forming the inner face of the said pack, in order to produce, virtually in the entire

thickness of the said lower layer (12), at least one perforation (14) forming at least one precut line." [Emphasis Supplied] [Claim 1, lines 1 to 14]

Nowhere does Olivieri et al. disclose putting lines of perforations in a layer before it is combines with other layers to form a composite film.

Olivieri et al.'s Figures 10 and 11 (copy enclosed) shows that lasers 1 and 2 are used in conjunction with composite film 10.

The anticipation of applicants' claimed process fails. Note that there is no obviousness rejection of applicants' process Claims 12 to 29.

The Office Action stated that Olivieri et al. discloses that the film is joined to the other layers by means of an adhesive layer to make up a composite film (page 2, lines 11 to 13), and providing a notch for initiating tearing in the region of the perforations the packaging being easy to open by the tear line (Figure 9a, number 431). This does not establish anticipation.

The Office Action stated that Olivieri et al. discloses that the perforations are cut after coating the film with adhesive (page 12, lines 7 to 10). This statement establishes that Olivieri et al. does not anticipate applicants' process claims. Applicants' independent process Claim 12 recites "joining the said pre-cut film (14) to the other layers (12) to make up a composite film (10)."

The Office Action stated: that Olivieri et al. discloses that the two lines of perforations are cut parallel or substantially parallel to each other (Figure 9a, numbers 433 and 432) and a distance apart as guidelines on both sides of a tear which propagates in the film on tearing open the packaging (Figure 9a, number 433, 432) and a notch is situated between the two lines of perforations (Figure 9a,

number 431); that Olivieri et al. discloses that the packaging film is employed for the production of pouch forms of packaging (page 1, lines 17 and 18); that Olivieri et al. discloses that the perforations are situated on the inner side of the packaging (Figure 8a, numbers 433 and 432); that Olivieri et al. discloses a notch for initiating tearing is provided in the region of the perforations (Figure 9a, number 431); and that Olivieri et al. discloses a packaging comprising two opposed wall members comprising a multilayer film (page 4, lines 10 and 11), each wall member having at least one line of perforations, that are provided in a plastic surface layer of the packaging and serve as an aid for alignment of tear line propagating in the packaging film upon tearing open the packaging (page 4, lines 15 to 20), a notch for initiating tearing in region of the perforations, the packaging being easy to open by means of the tear line (Figure 9a, number 431, 432, 433). This does not establish anticipation.

Figure 7 (copy enclosed) of Olivieri et al. discloses that microperforation 14 has the shape of a truncated triangle [with the slanting sides being under apart at the outer surface of layer 12(b)] and has an elevated lip around the opening to microperferation 14. The laser beam is absorbed by the plastic forming lower laying 12 and is reflected totally by metal (A1) central layer 13. The plastic is heated, melts and evaporates. (Page 12, lines 28 to 34, of Olivieri et al.) Apparently, the use of a laser beam to form the perforations once the composite, with a metal central layer, is formed results in such type (cross selection) of perforations. Accordingly, Olivieri et al. does not disclose the same product as applicants' product.

Applicants' Figure 1 shows that perforation 18 does not have an elevated rim about its opening. Applicants use a process to form perforation that is different from the process of Olivieri et al. By forming perforations 18 in layer 14 before layer 14 is incorporated into composite film 10, applicants do not have any effect from laser beam being reflected back. Applicants' product claims have been amended to recite that the run around perforations 18 are flat and even with the outer surface of film 14.

Olivieri et al. does not anticipate applicants' product claims.

This rejection should be withdrawn.

Claims 14, 16, 17 and 38 have been rejected under 35 U.SC. 103(a) as being unpatentable over Olivieri et al. in view of Heilmann et al. (U.S. Patent No. 5,000,321). Applicants traverse this rejection.

The Office Action stated that Olivieri et al. discloses the process comprising manufacturing a multilayer packaging film described above. Applicants traverse this statement on the basis of the above-presented facts and reasons showing the contrary.

Olivieri et al. does not teach or suggest cutting lines of perforations in a plastic sheet and joining the pre-cut plastic sheet with a plastic layer to form a multi-layered film. Instead, Olivieri et al. forms lines of perforations in a plastic layer that is already part of a multi-layered film (having a central metal layer). To try to change the sequence of process steps of Olivieri et al. would destroy the very invention of Olivieri. Heilmann et al. does not cure the defects of Olivieri et al. in the search for applicants' claimed invention.

The Office Action stated that Olivieri et al. fails to disclose that the perforations are cut before coating the film with adhesive. This is only part of what Olivieri et al. fails to teach or suggest.

The Office Action stated that Heilmann et al. teaches that the perforations are cut before coating the film with adhesive (col. 4, lines 47 to 49; col. 5, lines 1 to 8) for the purpose to guarantee a guided opening (col. 1, lines 40 and 41). This has nothing to do with Olivieri et al.'s disclosure which cuts perforations in one layer after the entire composite film has been formed.

The Office Action stated that, therefore, it would have been obvious to one having ordinary skill in the art at the time applicants' invention was made to provide Olivieri et al. with the process of having the perforations cut before coating the film with adhesive in order to guarantee a guided opening (col. 1, lines 40 and 41). Applicants traverse this statement as being speculative, forbidden hindsight. Since Olivieri et al.'s very invention is to cut perforations in a layer already in a composite film, the Examiner's assertion of cutting perforations in such layer before adhesive is applied to such layer does not make sense. It would require destruction of the very core of the Olivieri et al. invention after reading applicants' disclosure, which of course is not allowed under Section 103(a).

This rejection should be withdrawn.

Claims 20 to 22 and 40 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Olivieri et al. in view of Schlaeppi et al. (European Published Patent Application 0596747). Applicants traverse this rejection.

The Office Action stated that Olivieri et al. discloses the process comprising manufacturing a multi-layer packaging film described above. Applicants traverse this statement on the basis of the above-presented facts and reasons showing the contrary.

Olivieri et al. does not teach or suggest cutting lines of perforations in a plastic sheet and joining the pre-cut plastic sheet with a plastic layer to form a multi-layered film. Instead, Olivieri et al. forms lines of perforations in a plastic layer that is already part of a multi-layered film (having a central metal layer). To try to change the sequence of process steps of Olivieri et al. would destroy the very invention of Olivieri et al. Schlaeppi et al. does not cure the defects of Olivieri et al. in the search for applicants' claimed invention.

The Office Action stated that Olivieri et al. fails to disclose that the film is joined to the other layers by means of extrusion to make up a composite film. This is only part of what Olivieri et al. fails to teach or support.

The Office Action stated that Schlaeppi et al. teaches that the film is joined to the other layers by means of extrusion to make up a composite film (col. 4, lines 20 and 21) for the purpose of securing the inner and outer layers together (col. 4, lines 19 and 20). This does not cure the defects of Olivieri et al. in the quest for applicants' invention.

The Office Action stated that, therefore, it would have been obvious to one having ordinary skill in the art at the time applicants' invention was made to provide Olivieri et al. with the film that is joined to the other layers by means of extrusion to make up a composite film in order to secure the inner and outer layers

together (col. 4, lines 19 and 20) as taught by Schlaeppi et al. Applicants traverse this statement. Furthermore, even if Olivieri et al. and Schlaeppi et al. are combined, the result is not applicants' claimed invention.

Schlaeppi et al. teaches one ordinarily skilled in the art to not include or use tear notches. All of the teachings of the prior art of record, particularly those of the rejection references, must be considered. Schlaeppi et al. directs one ordinarily skilled in the art away from applicants' claimed invention and, thereby, in and of itself makes applicants' claimed invention unobvious.

The Examiner has not shown in the record that one ordinarily skilled in the art would have any reason or motivation to combine Olivieri et al. and Schlaeppi et al. in the search for applicants' claimed invention. Also, Schlaeppi et al. teaches not to include any tear notches since manufacturing malfunctions of packages having tear notches can result in misplaced tear notches and the like that ruins the integrity of the packages with product spoilage and/or leaking.

The Examiner has not factually established a prima facie showing of obviousness in the record. Furthermore, applicants have factually rebutted any prima facie showing of obviousness.

This rejection should be withdrawn.

Reconsideration, reexamination and allowance of the claims is requested.

Respectfully submitted,

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